STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the petition of **SPRINT SPECTRUM L.P.** for arbitration pursuant to Section 252(b) of the Telecommunications Act of 1996 to establish interconnection agreements with **MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN**.	Case No. U-17349
In the matter of the joint submission of **SPRINT SPECTRUM L.P.** and **MICHIGAN BELL TELEPHONE COMPANY, d/b/a AT&T MICHIGAN**, for approval of an interconnection agreement.	Case No. U-17569

At the March 18, 2014 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Greg R. White, Commissioner
Hon. Sally A. Talberg, Commissioner

ORDER

On December 6, 2013, the Commission issued an order in Case No. U-17349 adopting, as modified, the decision of the arbitration panel, and directed Sprint Spectrum L.P. (Sprint) and AT&T Michigan to submit a conforming interconnection agreement (ICA) by January 6, 2014 (December 6 order). Thereafter, the Commission granted the parties two extensions, one on December 19, 2013, and another on January 23, 2014, to file the conforming ICA. On

February 20, 2014, the Commission granted the parties a final extension and directed them to file the conforming ICA by February 25, 2014.

On February 25, 2014, the parties opened a new docket, Case No. U-17569, and filed an ICA. In the February 25 joint submission, the parties asserted that the proposed ICA conforms to the December 6 order, with the exception of Issue 1, which involves internet protocol (IP)-to-IP interconnection. The parties stated that they negotiated a "contingent resolution" of Issue 1, however it does not contain the language for IP-to-IP interconnection as proposed by Sprint and approved by the Commission in the December 6 order. Instead, the parties' proposed language states, "All traffic that Sprint exchanges with AT&T Michigan pursuant to this Agreement will be delivered in TDM format. Sprint may exchange traffic with AT&T Michigan pursuant to a separate agreement, and nothing herein prohibits Sprint from exchanging traffic with AT&T Michigan in IP format pursuant to such an agreement." Joint Submission, p. 2. In the event the contingency in Issue 1 is unfulfilled, the parties agreed that by July 15, 2014, they may request Commission review of an amendment to the ICA, which may include the language for IP-to-IP interconnection proposed by Sprint in Case No. U-17349, and they may delete the language set forth in the "contingent resolution." *Id.*

On March 5, 2014, the Midwest Association of Competitive Communications (MACC) filed comments in Case No. U-17569 requesting that the Commission require AT&T Michigan to "file any current or future agreement (or amendment to an interconnection agreement) under which it provides IP interconnection to Sprint or any other requesting carrier for Commission review and approval." Comments, pp. 7-8. On March 7, 2014, COMPTEL filed comments in Case Nos. U-17349 and U-17569 also requesting that the Commission require AT&T Michigan to file any IP-to-IP interconnection agreement with Sprint or any other requesting carrier for Commission

approval. Then, on March 11, 2014, TelNet Worldwide, Inc. (Telnet), Clear Rate Communications, Inc., DayStarr Communications, The Iserv Company, JAS Networks, Inc., and Superior Spectrum Telephone & Data, LLC, filed comments in Case Nos. U-17349 and U-17569 requesting several remedies, including that the Commission require AT&T Michigan and Sprint to file their "contingent resolution." On March 11 and 13, 2014, AT&T Michigan filed comments in response to MACC and TelNet, respectively, requesting that the Commission reject their comments.

Pursuant to Section 252(e)(4) of the federal Telecommunications Act of 1996 (FTA), 47 USC 252(e)(4), the Commission must approve or reject the proposed ICA within 30 days after it is filed, or the ICA, by default, is deemed approved. The proposed ICA was filed on February 25, 2014, and therefore, the Commission must approve or reject the proposed ICA on or before March 27, 2014.

The Commission finds that, with the exception of Issue 1, the parties' proposed ICA conforms to the December 6 order, is consistent with federal and state law, is in the public interest, and should be approved. Regarding the parties' "contingent resolution" of Issue 1 filed in Case No. U-17569, the Commission finds that pursuant to federal law, state and federal policy, and Commission precedent, it must reject the proposed language.

In its December 6 order, the Commission found that under Section 251(c)(2) of the FTA, AT&T Michigan must provide Sprint with IP-to-IP interconnection. The Commission adopted Sprint's IP-to-IP interconnection language as proposed during the arbitration. Section 252(e)(1) of the FTA states that, "Any interconnection agreement adopted by negotiation or arbitration shall be submitted for approval to the State commission. A State commission to which an agreement is submitted shall approve or reject the agreement…." Accordingly, the Commission finds that the

parties must file, for Commission approval or rejection, the agreement by which AT&T Michigan shall provide Sprint with IP-to-IP interconnection.

According to long-standing Federal Communications Commission (FCC) precedent, the Section 252(e)(1) filing requirement applies whether or not the parties label the proposed agreement an "interconnection agreement," a "contingent resolution," or some other designation: *any agreement* that "contain[s] an ongoing obligation relating to section 251(b) or (c) must be filed [with the State commission] under [Section] 252(a)(1)." *In the Matter of Qwest Communications International Inc. Petition for Declaratory Ruling on the Scope of the Duty to File and Obtain Prior Approval of Negotiated Contractual Arrangements under Section 252(a)(1)*, Memorandum Opinion and Order, 17 FCC Rcd 19337, n 26, (2002) (*Qwest Communications* order). In its December 6 order, the Commission determined that AT&T Michigan must provide Sprint with IP-to-IP interconnection, which is an *on-going interconnection obligation* under Section 251(c)(2). As a result, pursuant to the *Qwest Communications* order, the Commission finds that the parties must file the proposed IP-to-IP ICA.

In addition, FCC policy dictates that all ICAs shall be filed with a State commission to promote clarity and competition and to discourage incumbent local exchange carriers (ILECs) from discriminating against other competitive local exchange carriers (CLECs). In Paragraph 167 of *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499 (1996) (*Local Competition* order), the FCC stated that, "requiring the filing of all interconnection agreements best promotes Congress's stated goals of opening up local markets to competition, and permitting interconnection on just, reasonable, and nondiscriminatory terms." The FCC also stated that, "State commissions should have the opportunity to review *all* agreements…to ensure that such

agreements do not discriminate against third parties, and are not contrary to the public interest." *Id.* (Emphasis in the original.)

Furthermore, Section 252(e)(2)(A) of the FTA states that a State commission may reject a negotiated agreement if it discriminates against a telecommunications carrier who is not a party to the agreement or if the agreement is not consistent with the public interest, convenience, and necessity. If the parties to the immediate case do not file their "contingent resolution" for Commission review, the Commission will be unable to perform its Section 252(e)(2)(A) statutory duty, which would be contrary to the nondiscriminatory, pro-competitive purpose of Section 252 of the FTA. *See,* April 28, 2004 order in Case No. U-14121, pp. 1-3.

According to the FCC, an important purpose of the Section 252(e)(1) filing requirement is transparency; it permits third-party carriers to avoid discrimination by reviewing ICA rates and terms and allows third-party carriers to determine whether they would like to opt-in under Section 252(i) of the FTA. *See, In the Matter of Qwest Corporation Apparently Liable for Forfeiture*, Notice of Apparent Liability for Forfeiture, 19 FCC Rcd 5169, n 12 (2004). For this reason, the FCC found that, "Section 252(a)(1) is not just a filing requirement. Compliance with section 252(a)(1) is the first and strongest protection under the Act against discrimination by the incumbent LEC against its competitors." *Id.*, ¶ 46. If the parties to this case do not file their proposed IP-to-IP ICA for Commission review and public disclosure, the Commission finds that AT&T Michigan may have an opportunity to conceal the rates, terms, and conditions it is providing to Sprint, while it offers less favorable rates, terms and conditions to other competitors.

Section 252 also promotes competition. According to state and federal policy, Section 252(i) encourages competitive entry because it allows third-party carriers to obtain quick and efficient interconnection on the same terms and conditions as approved in a previous ICA, without the time

and financial burdens of a lengthy negotiation and approval process. *See, e.g.*, February 17, 1999 order in Case No. U-11839, p. 7; and *Local Competition* order, ¶ 1321. Consistent with state and federal policy, the Commission finds that the parties must file their IP-to-IP ICA for Commission approval and public disclosure, so that other competitors do not face prolonged and expensive negotiation with AT&T Michigan to obtain the same rates and services provided to Sprint under the agreement. *See*, April 23, 1999 order in Case No. U-11936, p. 2.

In addition, if third-party carriers are forced to endure discrimination, delay, and unnecessary expense in negotiating a new IP-to-IP ICA with AT&T Michigan, it clearly frustrates the FCC's "express goal of facilitating industry progression to all-IP networks…." *In the Matter of Connect America Fund; A National Broadband Plan for Our Future*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 1335 (2011).

Finally, the Commission finds that consenting to the parties' "contingent resolution" sets a widespread and damaging precedent. If the Commission fails to enforce the Section 252(e)(1) filing requirement in this case, it opens the door for ILECs to negotiate separate, side agreements that permit the ILEC to selectively conceal from the Commission and other CLECs rates, terms, and conditions of interconnection and traffic exchange. In the Commission's opinion, such a holding eviscerates Section 252 and defeats the nondiscriminatory, pro-competitive purpose of the Act.

THEREFORE, IT IS ORDERED that Sprint Spectrum L.P. and AT&T Michigan shall submit an internet protocol-to-internet protocol interconnection agreement for Commission approval by April 1, 2014.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party aggrieved by this order may file an action in the appropriate federal District Court pursuant to 47 USC 252(e)(6).

MICHIGAN PUBLIC SERVICE COMMISSION

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John D. Quackenbush, Chairman

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Greg R. White, Commissioner

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Sally A. Talberg, Commissioner

By its action of March 18, 2014.

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Mary Jo Kunkle, Executive Secretary

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Suggested Minute:

Case Nos. U-17349 and U-17569 involve an interconnection agreement between Sprint Spectrum L.P. and AT&T Michigan. The order before you directs the parties to submit an internet protocol-to-internet protocol interconnection agreement by April 1, 2014.